IN THE

Supreme Court of the United States

October Term, 1942.
No. 797

J. R. MASON,

Petitioner,

vs.

PALO VERDE IRRIGATION DISTRICT,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

ARVIN B. SHAW, JR.
WM. L. MURPHY
of
STEPHENS, SHAW & MURPHY
835 Rowan Building, Los Angeles
Attorneys for Respondent.

Parker & Baird Company, Law Printers, Los Angeles

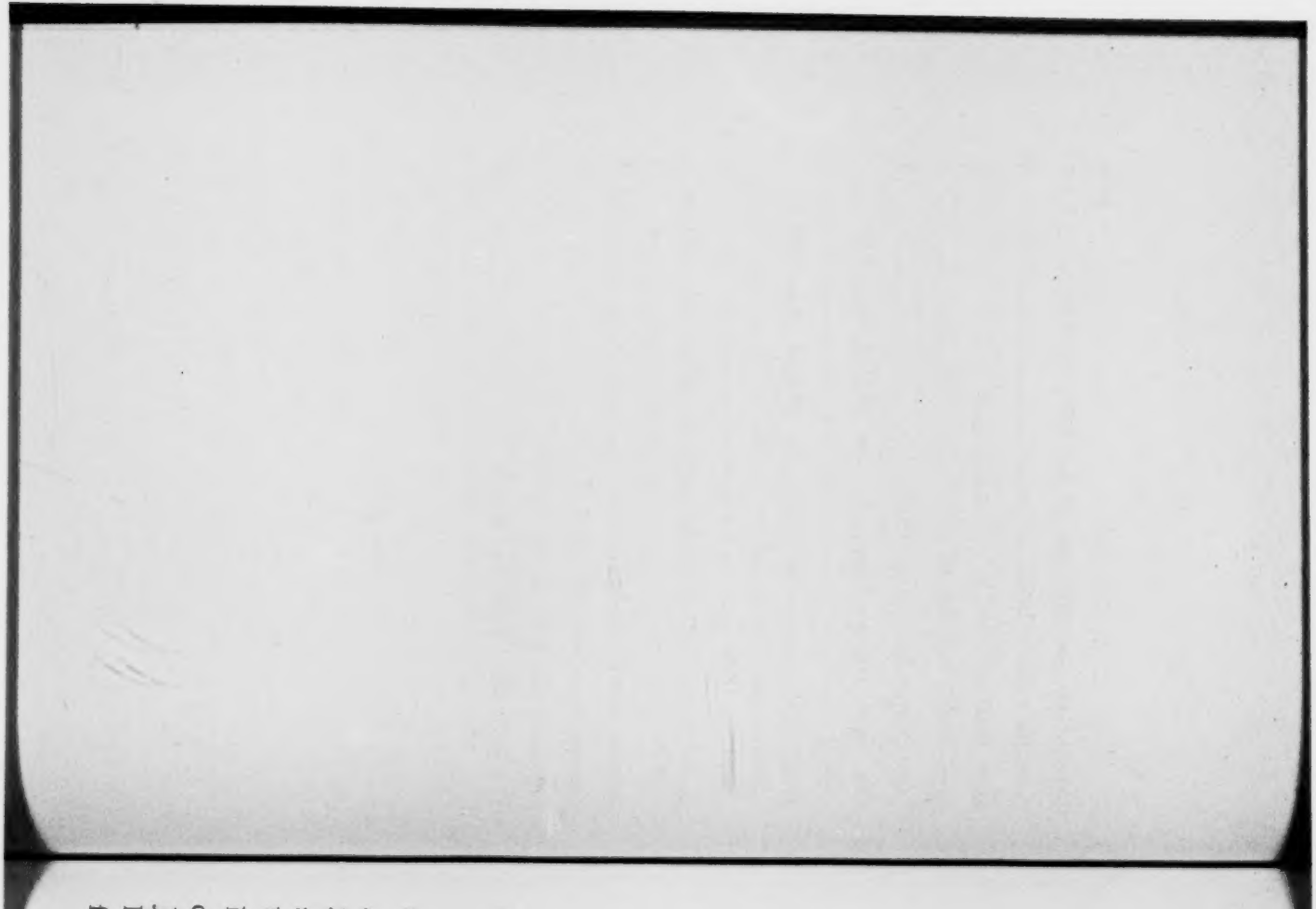
SUBJECT INDEX.

TABLE OF AUTHORITIES CITED.

CASES.

MISCELLANEOUS.

STATUTES.



IN THE

Supreme Court of the United States

October Term, 1942.

No. 797

J. R. MASON,

Petitioner,

vs.

PALO VERDE IRRIGATION DISTRICT,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Statement of the Case.

Respondent, a California irrigation district, after undergoing a complete financial collapse, filed its petition for relief under present Chapter IX of the Bankruptcy Act. Its plan of composition was confirmed by the District Court [R. Vol. II, 134]. The interlocutory decree was affirmed by the Circuit Court of Appeals on September 20, 1940 [R. Vol. II, 378], and certiorari was denied by this court (*Jordan v. Palo Verde Irrigation District*, 312 U. S. 693, 85 L. ed. 1129, Rhng. den. 312 U. S. 716, 85 L. ed. 1146). The District Court rendered its final decree [R. Vol. I, 8] on April 27, 1942, which was affirmed January 6, 1943, by the Circuit Court of Appeals [R. Vol. I, 35]. Petitioner, who was one of the four appellants from the interlocutory decree, seeks certiorari. Respond-

ent respectfully submits that the petition discloses no reason sufficient under rule 38 and the practice of this Court upon which the writ should be granted.

The Essential Facts.

Palo Verde Irrigation District comprises 95,000 acres of alluvial river-bottom, riparian to the Colorado River in the easterly end of Riverside County, California [R. Vol. II, 4, 184]. The river lies on a plane above the valley. The climate is hot, with summer temperatures up to 122 degrees; and arid, with average annual rainfall between two and three inches [R. Vol. II, 188].

In 1908 a Mutual Water Company laid out a canal system to irrigate the valley and a rudimentary levee to protect it [R. Vol. II, 185].

Gradual rising of the bed of the river led to floods in the valley and forced the organization in 1915 of a levee district and its issuance of bonds to construct extensive levees along the thirty-five mile river-front. The river bed continued to rise and floods recurred, the most disastrous of which, in 1922, inundated two-thirds of the valley [R. Vol. II, 185, 186].

In 1921 the pressure of water from the rising river caused a dangerously high water table in the valley, hence a drainage district was organized and bonded itself to construct a drainage system, so that farming might go on [R. Vol. II, 185].

For the purpose of reducing expense and coordinating effort, respondent irrigation district was formed in 1923, pursuant to a special act of the California legislature (Stat. Cal. 1923, p. 1067) which authorized the merger into respondent of the levee and drainage districts and its

acquisition of the Mutual Water Company's irrigation system. The act is otherwise patterned on the California Irrigation District Act. Respondent assumed the bonds of the three old entities and issued further bonds to reconstruct the broken levees and complete the canal system. Respondent comprises all lands in the levee and drainage districts, which were practically coterminous [R. Vol. II, 4, 186].

The peak acreage in cultivation, in 1926, was 36,135 acres [R. Vol. II, 257]. To meet the district's load of debt, its tax rate steadily mounted; in 1928 and 1929 to around $17.00 per $100.00 assessed valuation [R. Vol. II, 258]. The farmers, paying out more than they took in from their crops, borrowed on any credit they had and paid until their credit was exhausted [R. Vol. II, 312]. Then they began to drift from the land, until in 1933 the acreage farmed had dwindled to 21,117, 58% of the maximum [R. Vol. II, 257].

The land delinquent for district taxes swiftly pyramided as follows:

1927,	26.37	per cent
1928,	31.49	" "
1929,	55.76	" "
1930,	97.38	" "
1931,	99.28	" "
1932,	99.21	" "

[R. Vol. II, 258].

In 1930 the district defaulted on its bonds, which totaled $4,174,330.36 [R. Vol. II, 194]. It energetically reduced its operating expenses by more than half and continued operations by collecting water tolls from the residue of farmers remaining on the land [R. Vol. II, 252]. It

unsuccessfully sought aid from Congress [R. Vol. II, 194, 195], but finally in 1934 obtained a conditional commitment for a loan from Reconstruction Finance Corporation (hereinafter called R. F. C.) [R. Vol. II, 201] under the authority of Section 36 of the Emergency Farm Mortgage Act of 1933 (Title 43, U. S. C. Sec. 403). R. F. C. purchased from former holders 96.76% of the bonds [R. Vol. II, 224]. Petitioner, on the other hand holds 65/100ths of one per cent.

The market price of Palo Verde bonds in 1930 and 1931 was from 10 to 14. From 1931 to 1933 it declined to 2 [R. Vol. II, 151]. Twenty dollars cash would buy a one thousand dollar bond.

After filing a proceeding under Section 80 of the Bankruptcy Act, dismissed because of unconstitutionality [R. Vol. II, 295, 298] the district commenced the instant proceeding. On a full showing by the district, including testimony by qualified experts and practical farmers to facts supporting the fairness of the plan of composition and that it provided for the bondholders the limit that the land could bear [R. Vol. II, 286 to 324] and with practically no evidence offered by the bondholders, the District Court confirmed the plan.

At the time of the trial, if the district were mandamused to levy a tax to pay all matured principal and interest on its bonds, $2,954,817.51, the tax rate necessary would be $112.17 per $100.00 assessed valuation [R. Vol. II, 267]. If this levy were paid in full the remaining debt would be $3,242,830.36 and the tax rates for the next eight years would be from $12.00 to $15.00 per $100.00 [R. Vol. II, 268]. Under such circumstances "there would be no farming at all. The farmers would abandon their places wholesale and try to get them a job" [R. Vol. II, 314].

ARGUMENT.

I.

The Issue.

The issue before the court is whether or not the writ of certiorari should be granted. This brief is limited to that question. The merits of petitioner's claims of error are not involved and will not be discussed, except to illustrate their nature, as relating to the question whether the writ should issue.

II.

Grounds for Issuance of Writ.

Rule 38, Section 5 states the grounds for the issuance of certiorari to a Circuit Court of Appeals:

> "5. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> . . . . . .
>
> "(b) (1) Where a circuit court of appeals has rendered a decision in conflict with the decision of another circuit court of appeals on the same matter; (2) or has decided an important question of local law in a way probably in conflict with applicable local decisions; (3) or has decided an important question of federal law which has not been, but should be, settled by this court; (4) or has decided a federal question in a way probably in conflict with applicable decisions of this court; (5) or has so far departed from the accepted and usual course of judicial proceedings, or so

far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision." (Numbers in parenthesis supplied.)

Ground (1). Petitioner does not pretend that the decision of the Circuit Court of Appeals herein is in conflict with those of other circuit courts of appeals. In fact, all the decisions on Chapter IX of the Bankruptcy Act have been strikingly consistent on major issues. He does assert an inconsistency on one point (the twelve months' limit) between the decision herein and that of the same court in the previous case of *Nolander v. Butte Valley Irrigation District* (C. C. A. 9, decided December 31, 1942), 132 Fed. (2d) 704. As hereinafter shown, the discussion of the point in the *Nolander* case is *dictum,* whereas that in the the case at bar was a point of decision. At any rate, the *Nolander* case was not the "decision of another circuit court of appeals" within the meaning of Rule 38, Section 5(b).

Ground (2). Petitioner does not assert that the Court below has decided any question in conflict with applicable local decisions.

Ground (3). Petitioner does impliedly intimate that he thinks the Court below has decided important questions of Federal law which have not been, but should be, settled by this Court.

Ground (4). He does not contend that the decision below on a Federal question conflicts with any decision of this Court.

Ground (5). Nor does he contend that there has been any departure from "the accepted and usual course of judicial proceedings".

This Court will observe that although petitioner states and, to some extent, argues his four points under four successive headings, to-wit, "Our View of the Case", "Questions Presented", "Reasons for Granting the Writ", and "Brief in Support of Petition for Writ of Certiorari", he does not at any point in his petition or brief distinctly state upon what ground, under Rule 38, he claims that he is entitled to the writ.

III.

The Four Contentions Raised by Petitioner.

Petitioner makes and reiterates, under the four captions above quoted, four separate contentions. We examine these four points for the purpose of illustrating their character in the light of Rule 38 above quoted.

1. There was no error in enjoining the bondholders from asserting claims after entry of the final decree.

(A) It is true there is no provision in the Composition Act (Title 11, Sections 401-404 U. S. C.) for injunctions in the final decree. But the general authority of the Court to issue such writs in aid of its jurisdiction is amply conferred by Section 2, Item 15 of the Bankruptcy Act and by Section 262, Judicial Code (Title 28, Section 377 U. S. C.). *Nolander v. Butte Valley Irrigation District* (C. C. A. 9, decided December 31, 1942), 132 Fed. (2d) 74.

(B) Petitioner does not want to be enjoined from suing, on some undisclosed cause of action, this respondent District, the officers of Riverside County, or Palo Verde Joint Levee District.

(a) If he could still sue respondent there would be no finality whatever in the composition proceeding.

(b) Under the Levee District Act and Levee Bond Act, any duties of the county officers were purely on behalf of the Levee District in whose shoes they stood.

(c) Petitioner quotes Section 10 of the Levee District Act. The quotation is badly garbled, but it is immaterial since the bonds in question were issued under the authority of the Levee Bond Act of 1911, not the Levee District Act of 1905 [R. Vol. II, 96, 97]. Section 9 of the Levee Bond Act [full copy of which appears in Appendix A to this brief] does provide for assessments upon land, improvements and personal property.

A part of Section 24 of the Palo Verde Irrigation District Act (Cal. Stats. 1923, page 1067) is quoted by petitioner (Br. 21). The entire section is reproduced as Appendix B to this brief. The provisions of Section 24, which required that Levee District bonds should be paid by assessment upon the same properties which were taxable under the provisions of the bonds and the acts in pursuance of which they were created, were implemented by Section 28 (Cal. Stats. 1923, page 1067, as amended by Cal. Stats. 1927, page 974, and Cal. Stats. 1931, page 1890) which specifically required the levying of assessments upon lands, improvements and personal property. Petitioner's statement (page 22) that the Irrigation District Act provided for assessments against land only is not true.

(d) By Section 12 of the Irrigation District Act [copy of which is Appendix C hereto] the Levee District was merged into the Irrigation District. All of its territory is within the boundaries of the Irrigation District [R. Vol. II, 94]. The substitution of the Irrigation District for the Levee District, with full and adequate power to levy

taxes and to pay the levee bonds, worked no harm to the bondholders. (*Moody v. Provident Irrigation District,* 12 Cal. (2d) 389, 394.) The Irrigation District is the statutory successor of the Levee District, and the Levee District is now twenty years defunct. Petitioner could not recover from the land or landowners of the Levee District without recovering from the land or landowners of the Irrigation District, which it is the function of the final decree herein to prevent. (*Nolander v. Butte Valley Irrigation District* (C. C. A. 9, decided December 31, 1942), 132 Fed. (2d) 704.)

2. The Court did not err in fixing the twelve months' period within which bondholders should deposit their bonds.

A. The remarks of the Court in *Nolander v. Butte Valley Irrigation District (supra)* on this point were *dictum* since the Court concluded that by reason of a stipulation extending the time for deposit of the bonds the appellant was not injured. Therefore the point was moot.

(B) However, the point urged in the *Nolander* case, that the twelve months should run from the date the final decree became final instead of the date of its issuance, was not urged before the Circuit Court of Appeals herein. In the case at bar petitioner claimed before the Circuit Court of Appeals (Op. Br. 11) that no time limit for deposit of bonds could be fixed.

(C) The one year period was fixed in *Chicot County Drainage District v. Baxter State Bank,* 308 U. S. 371, 373, 84 L. ed. 329, and at page 375 the Court stated:

> "It appears that the proceedings in the District Court to bring about a plan of readjustment were conducted in complete conformity to the statute."

Of course there must be some time at which a litigation is at an end. Appellant could produce his bonds and deposit them in one day. He has made no effort to suspend the operation of the final decree by supersedeas or otherwise.

3. The Court did not change the plan of composition by the final decree. The final decree interpreted the true meaning of the plan and interlocutory decree.

Petitioner picks out one clause of the plan of composition and takes it literally as authorizing him to detach all his coupons from the bonds and present them as "detached coupons" for an allowance which would exceed the amount allowed by the plan for both bonds and coupons by an amount exceeding $10,000.00. The District Court prohibited this dodge by interpreting the entire plan to mean that it could not be done. If petitioner's scheme were the true meaning of the plan, the plan could not work out, because the R. F. C. loan on which the plan was based called for the retirement of $4,178,330.36 of indebtedness by the use of not over $1,039,423.00, which would be at the rate of 24.81¢ per dollar of principal of the bonds. Since petitioner had made the same claim in *Mason v. Anderson-Cottonwood Irrigation District* (126 Fed. (2d) 921) the trial judge was fully justified, whether or not there was an ambiguity, patent or latent, in the interlocutory decree or the plan, in setting out in the final decree the true meaning of the plan. Title 11, Section 403(e) U. S. C. specifically requires that the trial judge must be satisfied that the plan "is fair, equitable, and for the best

interests of the creditors and does not discriminate unfairly in favor of any creditor or class of creditors; . . .". It is self evident that petitioner seeks a preference over what other bondholders have been paid.

4. The final decree does not interfere with governmental or political affairs of the District.

It is idle for petitioner now to argue that the final decree interferes with governmental or political affairs of the District. The point was settled in *Mason v. Merced Irrigation District,* 126 Fed. (2d) 920 (Cert. denied, ... U. S. ....., 87 L. ed. Adv. Op. 37; Rhng. den. 87 L. ed. Adv. Op. 107) and *Mason v. Anderson-Cottonwood Irrigation District,* 126 Fed. (2d) 921 (cert. denied, 316 U. S. 697, 86 L. ed. 1767; rhng. den. 87 L. ed. Adv. Op. 51).

Conclusion.

We have not attempted herein to argue *in extenso* the merits of the four points raised by petitioner, but we have sought to show, not only that they are untenable, but that they are points in ordinary run-of-the-mill litigation, resting upon and limited to the particular facts of the individual case, for which the Circuit Courts of Appeals "are, and must be, courts of last resort, . . .". (*Frankfurter and Hart,* 48 Harvard Law Review 238, 260, *et seq.*) They do not possess "the character of importance" which should move this court to take jurisdiction. None of the points raised has any general or widespread or basic public significance.

The petition for certiorari is one of the 80 per cent of such applications made with what the former Chief Justice has called "an utter absence of any good reason for asking our review" (*Hughes, C. J.*, address before American Law Institute, 20 American Bar Association Journal 341).

The writ should not issue, when its purpose would be merely the re-examination of questions of fact under conflicting evidence or the scrutinizing of the Circuit Court's application of ordinary rules of law thereto.

It is respectfully submitted that the petition should be denied.

ARVIN B. SHAW, JR. and
WM. L. MURPHEY
of
STEWART, SHAW & MURPHEY.
Attorneys for Respondent.